
BEACH AVENUE BARRISTERS

A LAW CORPORATION

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DATE: January 8, 2010
TRANSMITTAL FROM: Henry C. Wood
TO THE ATTENTION OF: ANTHONY JASICH
TELECOPIER NO. 604-685-6518
OUR FILE NO. 090858
WE ARE SENDING: 9 pages including this cover page

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Reply to: Henry C. Wood, Q.C.
Direct Line: 604-718-6888
Email: hwood@beachavenuebarristers.com

*Suite 105 - 1008 Beach Avenue
Vancouver, B.C. V6E 1T7
Fax: 604-689-4451
Our File: 090858*

January 8, 2010

TRANSMITTED BY FAX: 604-685-6518

PERSONAL & CONFIDENTIAL

Anthony J. Jasich, LL.B,
403 - 567 Lonsdale Avenue,
North Vancouver, B.C.
V7M 2G6

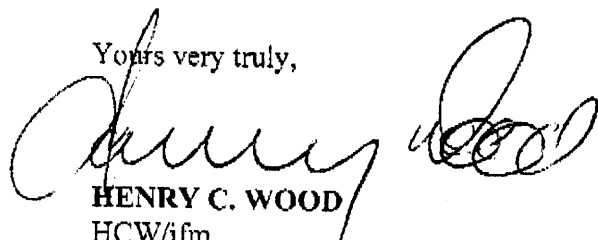
Dear Mr. Jasich

**Re: Law Society - Citation
Hearing Dates: March 2 and 3, 2010**

I enclose a report opinion obtained from Michael Walker of Miller Thomson LLP, dated January 8, 2010, along with a copy of his Curriculum Vitae. It is the Law Society's intention to rely upon this at your Citation hearing.

Kindly acknowledge delivery of this report by endorsing and returning the duplicate copy of this letter.

Yours very truly,



HENRY C. WOOD

HCW/jfm

Enc.

cc S. Cameron (Law Society of B.C.)

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HCW/jfm
Enc.
cc S. Cameron (Law Society of B.C.)

Service / I have reviewed the documents
referred to and have acknowledged
this _____, 20____

Solicitor for _____

MILLER THOMSON LLP

Barristers & Solicitors
Patent & Trade-Mark Agents

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January 8, 2010

Michael Walker
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DELIVERED VIA COURIER

File: 55267 0007

Beach Avenue Barristers
105-1008 Beach Avenue
Vancouver, BC V6E 1T7

Attention: Henry Wood, Q.C.

Dear Sir/Madam:

**Re: Anthony Jasich
Your File No. 090858**

You have asked for my opinion on the following questions:

1. Was the position being taken by Mr. Jasich on behalf of Mr. Gaffney with CIBC indicative of a competent solicitor with regard to the following in particular:
 - (a) the continued forwarding of monthly money orders; and
 - (b) the insistence upon a mortgage payout from CIBC, in light of CIBC's provision of a copy of the discharge statement in its letters of February 25, 2008 and April 14, 2008.
2. Is there any reasonable basis upon which a competent solicitor would allege that Mrs. Gaffney's counsel (Keith Oliver) was attempting "to get CIBC to go along with" a "massive theft of theft of equity in the fraudulent transfer of property transaction"?
3. What is the current status of electronic filing within British Columbia, and did it appear to play any role in facilitating any apparent fraud in relation to the transactions affecting the Gaffney property?

I have reviewed the following documents provided by you:

1. A copy of your letter to Mr. Jasich dated November 17, 2009;
2. A copy of the Citation issued against Mr. Jasich (marked #91);

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3. A copy of the letter of Complaint by CIBC with copies of correspondence provided to CIBC by Mr. Jasich and his client (marked as (1));
4. A copy of Mr. Jasich's letter to the Attorney General of May 13, 2009 (marked #90);
5. A copy of the Re: Oehlerking Estate decision (BCCA);
6. Correspondence from CIBC, dated February 25, 2008 (marked #2) and April 14, 2008 (marked #6);
7. The following documents bearing the numbers in the disclosure given to Mr. Jasich:
1 to 17, 27, 28, 30, 31, 43 to 52, 71 to 77, 78 to 81 and 90.

My opinions expressed in this letter are based on the foregoing documents, on the relevant provisions of the *Land Title Act*, and on my experience as a solicitor practicing chiefly in the area of commercial and residential real estate transactions since my call to the bar in 2001.

Question 1. Was the position being taken by Mr. Jasich on behalf of Mr. Gaffney, with CIBC indicative of a competent solicitor with regard to the following in particular:

- (a) The continued forwarding of monthly money orders; and
- (b) The insistence upon a mortgage payout from CIBC, in light of CIBC's provision of a copy of the discharge statement in its letters of February 25, 2008 and April 14, 2008.

There may have been a basis on which to question whether Mr. Gaffney had remaining obligations to CIBC at the time of Mr. Jasich's letter to CIBC on February 14, 2008. A release of CIBC's mortgage had been filed in the Land Title Office on January 4, 2008, but it remained within the realm of possibility that the release was fraudulently obtained and filed.

CIBC's response on February 25, 2008 should have been the end of any question. The letter enclosed a copy of CIBC's discharge statement and expressly confirmed that the loan had been paid out. It was signed by an official of CIBC who expressly represented that he was responding on behalf of the bank in response to Mr. Jasich's letter to the bank's president.

Following receipt of the February 25 CIBC letter, and in the context of a court ordered partition and sale of the property, in my opinion a competent solicitor would advise his client that the client was entitled to rely on the letter and on the registration of the mortgage release, and consider the loan to be fully repaid. Under these circumstances, if instructed by the client to continue forwarding monthly payments and to demand a payout statement for the loan, the proper course of action for the solicitor would be to refuse to act on those instructions.

In my opinion, the Oehlerking Estate case has no relevance to these matters.

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Mr. Jasich's later letters seem to indicate that by "payout statement" he meant not the statement delivered by the bank prior to closing setting out the funds required to discharge the mortgage, but a statement after the fact confirming the date and time of payment and the source of funds. Mr. Jasich's client may be entitled to this information, though it would not bear on his continued liability for the loan. In any event, the obvious conclusion was drawn by Mr. Jasich himself and included in his February 14, 2008 letter to CIBC: the source of the payout funds was the court-ordered sale of the property to Mariana Ovido Ovando and Brent Tremain, whose lawyer William Cadman paid \$214,215.07 to Keith Oliver, who in turn paid out the CIBC mortgage in reliance on the discharge statement provided by CIBC on December 20, 2007 and later provided to Mr. Jasich.

Question 2. Is there any reasonable basis upon which a competent solicitor would allege that Mrs. Gaffney's counsel (Keith Oliver) was attempting "to get CIBC to go along with" a "massive theft of theft of equity in the fraudulent transfer of property transaction"?

The documents I have reviewed do not disclose any reasonable basis upon which a competent solicitor could make these allegations. The evidence is that, despite the continuing protestations of Mr. Gaffney, the entire matter was very closely supervised by the B.C. Supreme Court and the B.C. Court of Appeal. Rather than alleging a fraud against his client, in my opinion Mr. Jasich should have concluded from the judicial record, and in particular from the Court of Appeal decision (2007 BCCA 595), that his own client was improperly attempting to frustrate the operation of valid legal processes.

Question 3. What is the current status of electronic filing within British Columbia, and did it appear to play any role in facilitating any apparent fraud in relation to the transactions affecting the Gaffney property?

Electronic filing of instruments in the Land Title Office is permitted by Part 10.1 of the *Land Title Act*. Among those instruments permitted to be filed electronically is a release of mortgage. The Act requires the instrument to be "signed" electronically by the subscriber (typically a lawyer) using an electronic signature. For *Land Title Act* purposes, the electronic instrument (under the current regulations, an Adobe Acrobat document) is considered to be the real instrument; any paper print of the document, whether or not originally signed, is considered to be a copy.

Under section 168.3, the subscriber may affix an electronic signature to the Acrobat document only if the subscriber has a copy in hand, signed by the parties in accordance with the requirements of the Act, or a copy of such a copy. The requirements of the Act are set out in Part 5, and for a corporation specifically in section 44. The signature of the witness (termed an "officer" under the Act) is a certification by the officer that: (a) the signatory appeared before the officer and acknowledged being an authorized signatory, acknowledged that the signatory and any other signatories were authorized by the corporation to execute the instrument, and acknowledged that the corporation existed at the time of execution and was entitled to hold and dispose of land in British Columbia; and (b) the signature on the instrument is the signature of the person who made the acknowledgements.

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The subscriber submitting an electronic instrument to the Land Title Office is entitled to rely on the certification by the lawyer or notary who witnessed the execution of the paper copy that the requirements of Part 5 of the Act have been satisfied, unless the subscriber knows of a defect. Once the subscriber is satisfied that the paper copy has been properly executed, the names of the signatories and witnesses are inserted into the Acrobat document, the subscriber's electronic signature is affixed, and the Acrobat document is submitted electronically to the Land Title Office. No actual signatures are reproduced on the instrument filed in the Land Title Office.

Section 35 of the *Land Title Act*, which provides that an instrument executed in accordance with the Act must be received as evidence in court without further proof of execution, does not, pursuant to section 168.12, apply to electronic instruments. Therefore, while the filing of an electronic mortgage release in the Land Title Office unequivocally releases the mortgage, prudent solicitors' practice is to obtain and retain an originally signed and witnessed copy of the instrument, and of course to retain evidence of payment.


In the case of the Gaffneys' mortgage, Mr. Jasich's inability to obtain a mortgage release originally signed by authorized signatories of CIBC may have been a concern in the absence of confirmation from CIBC that the loan had been paid out. However, in the context of CIBC's repeated confirmation that the loan had been paid out and the mortgage released, there should have been no concern. Based on the evidence I have reviewed, electronic filing of the mortgage release did not appear to play any role in facilitating fraud in relation to the Gaffney property.

Any inquiry into the authorization of the signatories and witness recorded in the CIBC discharge was unnecessary and pointless, given that Mr. Jasich and Mr. Gaffney were clearly entitled to rely on the electronically filed release of mortgage and CIBC's assurance that the loan had been paid out.

Yours truly

MILLER THOMSON LLP

Per:



Michael Walker
LMW/ijf

CURRICULUM VITAE
MICHAEL WALKER, B.COMM, LLB
 2070 E 8th Avenue
 Vancouver, B.C. V5N 1V2

Partner, Miller Thomson LLP, Barristers and Solicitors
 Chair, Vancouver Real Estate Practice Group

PAST POSITIONS

2001-2007 Associate, Miller Thomson LLP
 1991-1997 Co-ordinator, Tenants' Rights Coalition, Vancouver
 1988-1991 Office Manager, Canadian PID Society, Vancouver
 1984-1987 Editor, *Sherwood Park News*, Edmonton, Alberta

EDUCATION

Bachelor of Laws, University of British Columbia, 2000
 Bachelor of Commerce, University of Alberta, 1995

PUBLICATIONS, VOLUNTEER AND PROFESSIONAL ACTIVITIES

Member, Canadian Bar Association

Member, Editorial Board
British Columbia Strata Property Practice Manual
 Continuing Legal Education Society of British Columbia

2008 Author, "Governance" and "The Strata Plan"
 chapters in *British Columbia Strata Property Practice Manual*
 Continuing Legal Education Society of British Columbia

1998-1999 Member, Board of Commissioners
 British Columbia Housing Management Commission

1995 Founding member, Woodward's Co-operative Housing Society, Vancouver

1993-1999 Member, Minister's Advisory Council on Affordable Housing
 Ministry of Municipal Affairs and Housing

1997-1998 Member, Board of Directors
 Portland Hotel Society, Vancouver

1997 Chair, Court of Revision #395 (Vancouver)

1995-1997 Member, Citizens' Advisory Group on Property Taxation
 City of Vancouver

1995 Chair, Secondary Suites Task Group

RESUME

MICHAEL WALKER

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Advisory Council on Affordable Housing, Ministry of Housing.